

MANDATE

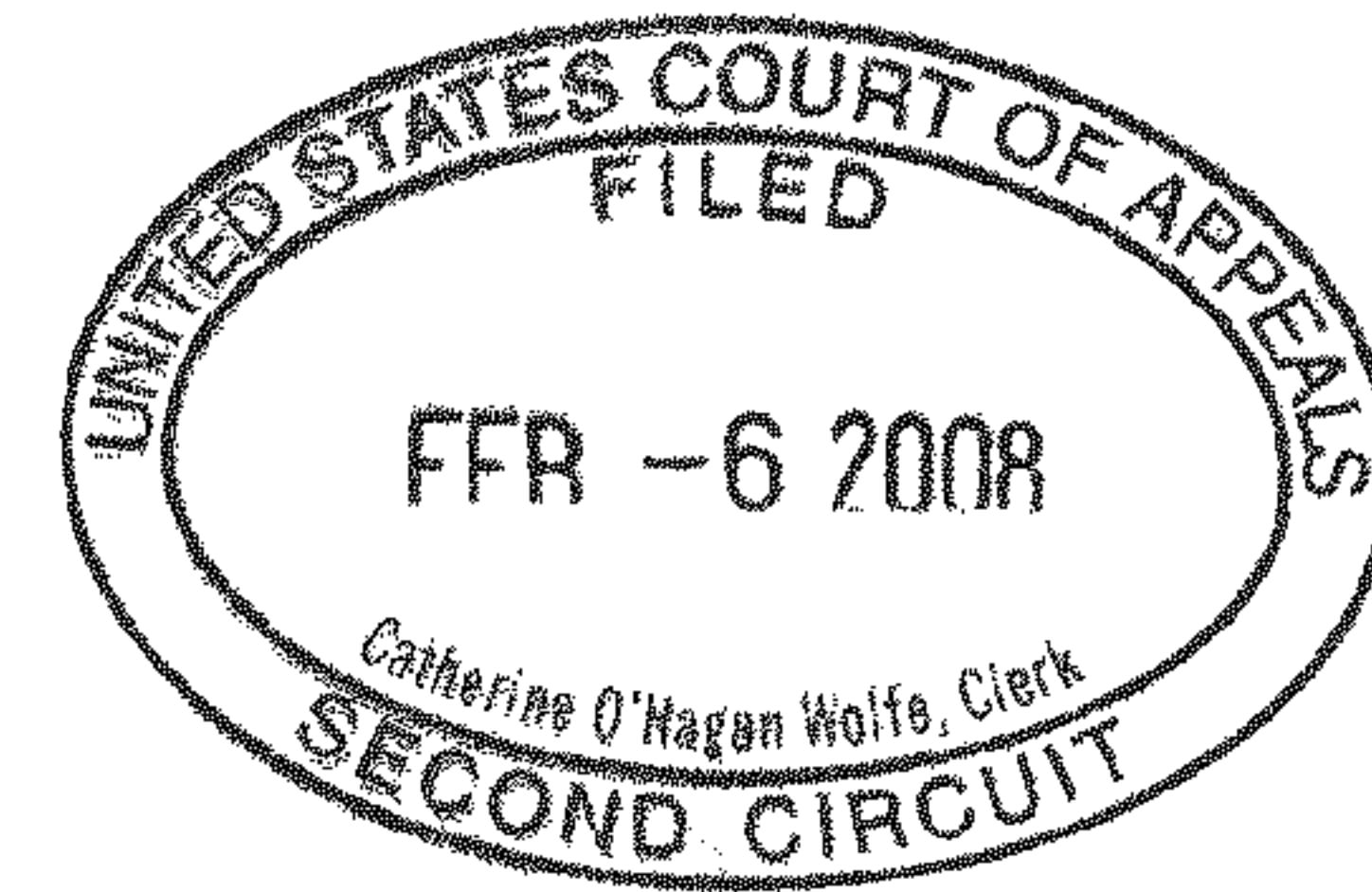
S.D.N.Y.
07-cv-5523
Wood, C.J.

United States Court of Appeals FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 6th day of February, two thousand eight.

Present:

Hon. Sonia Sotomayor,
Hon. Debra Ann Livingston,
Circuit Judges,
Hon. Gregory W. Carman,*
Judge, U.S. Court of International Trade.



Timothy Wynn,

v.

Petitioner-Appellant,

07-3166-pr

Lawrence Sears,

Respondent-Appellee.

Appellant, *pro se*, moves for a certificate of appealability, to proceed *in forma pauperis*, and for appointment of counsel. Upon due consideration, it is hereby ORDERED that the motions are DENIED and the appeal is DISMISSED because Appellant has not shown that “jurists of reason would find it debatable whether the district court was correct in its procedural ruling,” *Slack v. McDaniel*, 529 U.S. 473, 478 (2000), and has not made a “substantial showing of the denial of a constitutional right,” 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003). Appellant was not “in custody” under the conviction or sentence under attack at the time that he filed his 28 U.S.C. § 2254 petition. See 28 U.S.C. § 2254(a); *Maleng v. Cook*, 490 U.S. 488, 490-94 (1989).

FOR THE COURT:
Catherine O’Hagan Wolfe, Clerk

By:

A TRUE COPY
Catherine O'Hagan Wolfe, Clerk 2008
by
DEPUTY CLERK

*The Honorable Gregory W. Carman, of the United States Court of International Trade, sitting by designation.

SAO-ED

Issued as Mandate:

MAR 11 2008

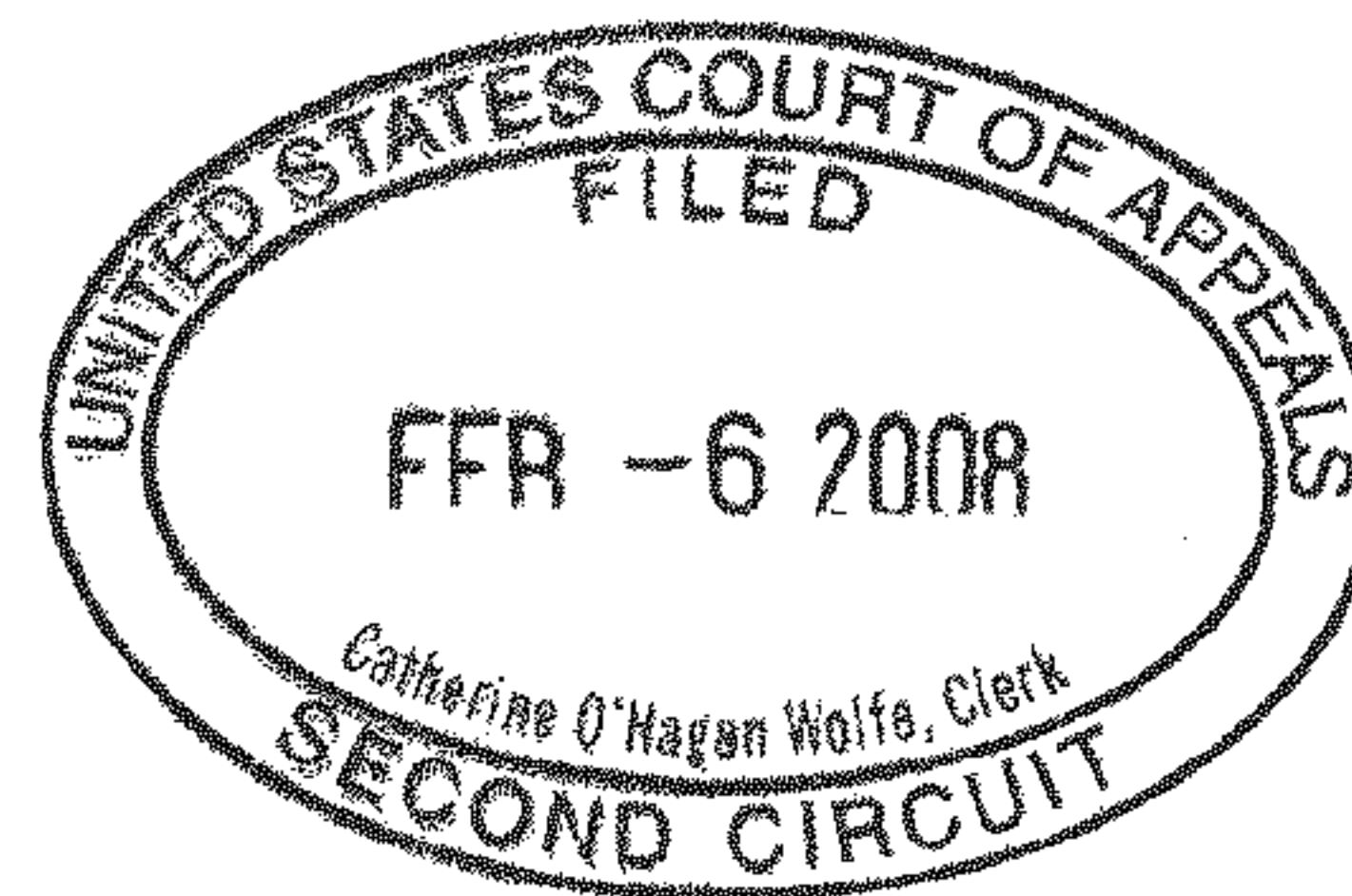
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THE MANDATE, CONSISTING OF
ITEMS BELOW, HAS BEEN RECEIVED.
() OPINION () STATEMENT OF COSTS
(✓) ORDER FEB 6 2008
RECEIVED BY: [REDACTED] DATE: [REDACTED]
RETURN TO CIVIL TEAM

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By:

*The Honorable Gregory W. Carman, of the United States Court of International Trade, sitting by designation.